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September 13, 2005

BY ELECTRONIC AND OVERNIGHT MAIL

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 04-33; Notice of Proposed Tariff Revisions to Verizon Tariff
M.D.T.E. No. 17 (TT 05-87)

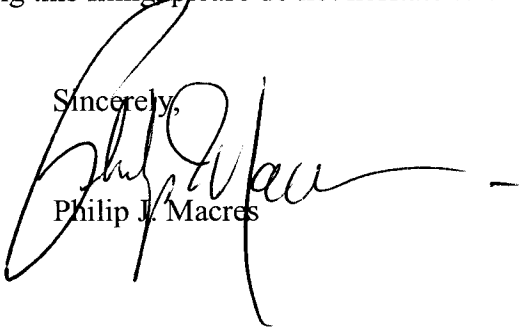
Dear Secretary Cottrell:

Attached hereto for filing in the above-referenced proceeding are RCN-BecoCom, LLC's Comments on Verizon Massachusetts' Compliance Filing.

An original and nine (9) additional copies of this filing are attached. Also attached is an extra copy of this filing. Please date-stamp it and return it in the attached, postage prepaid envelope provided. In addition, please note that a copy of this filing will be submitted to the Department in electronic format by E-mail attachment to dte.efiling@state.mass.us.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,


Philip J. Macres

Enclosure

cc: Tina Chin, Arbitrator
Jesse Reyes, Arbitrator
DTE 04-33 Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Verizon New England, Inc. for Arbitration of
an Amendment to Interconnection Agreements with
Competitive Local Exchange Carriers and Commercial
Mobile Radio Service Providers in Massachusetts Pursuant
to Section 252 of the Communications Act of 1934, as
Amended, and the *Triennial Review Order*

D.T.E. 04-33

Notice of Proposed Tariff Revisions to Verizon Tariff
M.D.T.E. No. 17 (TT-05-87)

**RCN-BECOCOM, LLC'S COMMENTS ON
VERIZON MASSACHUSETTS' COMPLIANCE FILING**

Pursuant to the Hearing Officer's September 6, 2005 memorandum, RCN-BecoCom, LLC ("RCN"), by its attorneys, submits its comments regarding Verizon's August 29, 2005 compliance filing.

Verizon's proposal is inadequate to assure the rights of CLECs to obtain interconnection facilities under Section 251(c)(2) of the Telecommunications Act of 1996. Verizon should be required to clarify in its proposed tariff that Unbundled IOF Transport used for § 251(c)(2) interconnection purposes remains available at TELRIC-based rates even though such facilities may no longer be available as unbundled network elements pursuant to § 251(c)(3). As discussed below, such a clarification is legally justified and necessary.

First, the *TRO*¹ and *TRRO*² support such a clarification. Despite narrowing the definition of dedicated transport in the *TRO* that ILECs must offer as UNEs pursuant to § 251(c)(3), the

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of

FCC explicitly preserved the right of CLECs to use ILEC dedicated transport (which includes dedicated interoffice transport and entrance facilities) for § 251(c)(2) interconnection. The FCC explained that, “[u]nlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection, we find that the Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic.”³ The FCC specifically stated in the *TRO* that “all telecommunications carriers ... will have the ability to *access transport facilities* ... to interconnect for the transmission and routing of telephone exchange service and exchange access, pursuant to section 251(c)(2).”⁴ The FCC explained that “to the extent that requesting carriers need facilities in order to ‘interconnect[] with the [incumbent LEC’s] network,’ section 251(c)(2) of the Act explicitly provides for this and we do not alter the Commission’s interpretation of this obligation.”⁵

Moreover, in the *TRRO*, the FCC reaffirmed its finding that ILECs must offer dedicated transport that is needed for § 251(c)(2) interconnection at TELRIC.⁶ While the FCC “reinstated

Proposed Rulemaking, 18 FCC Rcd 16978 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003) (“*Triennial Review Order*” or “*TRO*”) (subsequent history omitted).

² *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 19 FCC Rcd 16783, FCC 04-290 (rel. Feb. 4, 2005) (“*Triennial Review Remand Order*” or “*TRRO*”).

³ *TRO*, ¶ 366 (emphasis added).

⁴ *TRO*, ¶ 368 (emphasis supplied).

⁵ *TRO*, ¶ 366. In its July 14, 2005 Arbitration Order in D.T.E. 04-33, the Department similarly found that the *TRO* and the *TRRO* “did not alter the FCC’s prior determinations concerning entrance facilities” and that “the FCC made no findings, clarifications, or statements” in these FCC orders “that changes the parties’ pre-existing rights and responsibilities concerning interconnection facilities.” D.T.E. 04-33, Arbitration Order at 224.

⁶ The FCC’s TELRIC pricing methodology applies to both interconnection facilities provisioned pursuant to 251(c)(2) and UNEs provisioned pursuant to 251(c)(3). See 47 U.S.C.

the *Local Competition Order* definition of dedicated transport to the extent that included entrance facilities” and found “that requesting carriers are not impaired without unbundled access to entrance facilities,”⁷ the FCC explained that this latter finding

does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC’s network.⁸

Given this, Verizon’s obligation to offer § 251(c)(2) interconnection facilities (including dedicated transport and entrance facilities used for interconnection) at TELRIC-based rates continues even though Verizon may have been relieved of offering entrance facilities and certain dedicated interoffice transport routes as § 251(c)(3) UNEs.⁹

Therefore, clarification is necessary because Verizon’s proposed tariff would limit its obligation to provision dedicated transport in its tariff to the extent the FCC’s § 251(c)(3) unbun-

252(d)(1); 47 C.F.R. 51.501 *et seq.*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 618 (1996) (subsequent history omitted) (“*Local Competition Order*”).

⁷ *TRRO*, ¶ 137.

⁸ *TRRO*, ¶ 140 (citing *TRO*, ¶ 366).

⁹ To explain further, Verizon has widely deployed transport facilities, which includes dedicated interoffice transport and entrance facilities, that connect its central office switches to multi-carrier telecommunications buildings. To date, CLECs have obtained such dedicated transport from Verizon both (1) to use to backhaul their own services from the central office to their own facilities and (2) to interconnect with Verizon’s network for the transmission and routing of telephone exchange service and exchange access service. CLECs were entitled to access for the first purpose as an unbundled network element under §251(c)(3), and for the second purpose under §251(c)(2). But little attention was paid as to which of these two uses the CLEC sought access for, because for years CLECs were entitled to dedicated transport for both purposes, at the same TELRIC rates. After the *TRO* and *TRRO* eliminated the entrance facility UNE, however, it became important to clarify the scope of Verizon’s remaining obligations under § 251(c)(2).

dling regulations require it to offer such facilities.¹⁰ The problem with this limitation language is that the same tariff terms apply when the facilities are used to interconnect with Verizon pursuant to § 251(c)(2). The proposed tariff does not clarify that dedicated transport remains available for interconnection purposes even though it may not be available on an unbundled basis pursuant to the FCC's § 251(c)(3) unbundling regulations.

For instance, dedicated transport specifically used to interconnect between a CLEC's switch and Verizon's switch (which can be either Meet Point A & B interconnection arrangements) is expressly referenced in section C of Verizon's tariff. It states that "**Transport** will be provided ... under the terms and conditions of the applicable to Telephone Company tariff."¹¹ The "applicable" tariff is Verizon's Unbundled IOF Transport tariff because it specifies that "Unbundled dedicated IOF transport provides a transmission path within a LATA betweenA CLEC designated central office premises or collocation arrangement and a Telephone Company central office switch when used solely as an interconnection transport facility under a Meet Point A or B Reciprocal Traffic Exchange Trunk arrangement, as defined in Part C Section 1."¹² However, Verizon's language that limits its obligation to offer dedicated transport facilities pursuant to the FCC's § 251(c)(3) unbundling regulations also appears to limit the availability of such facilities if they are used for interconnection purposes pursuant to § 251(c)(2).

¹⁰ See, e.g., DTE MA No. 17, Part B Section 2.2.2.A, page 3 (limiting the availability of unbundled access to entrance facilities) Section 2.1.1.B.1, page 1 (limiting the availability of unbundled DS1 dedicated transport); Section 2.1.1.C.1, page 2 (limiting the availability of unbundled DS3 dedicated transport); Section 2.1.1.G & I (limiting the availability of unbundled IOF transport).

¹¹ See DTE MA No. 17, Part C Section 1.5.1.A.2., page 7.

¹² See, e.g., DTE MA No. 17, Part B Section 2.1.1.F.4.

Because of this, RCN requests that the Department include a new Section 2.1.1.A.8 in Part B of Verizon's tariff that states:

Any provisions in this Tariff that limit the availability of Unbundled IOF Transport or impose obligations on CLECs that are based on the FCC's Section 251(c)(3) unbundling regulations do not apply when (1) such unbundled dedicated IOF transport, including entrance facilities, are used for 251(c)(2) interconnection purposes and (2) used solely as an interconnection transport facility as contemplated under a Meet Point A or B Reciprocal Traffic Exchange Trunk arrangement, as defined in Part C Section 1 of this Tariff. Such facilities will remain available under the tariff as 251(c)(2) interconnection facilities even though they may not be available under the tariff as 251(c)(3) unbundled network elements.

Notably, under Verizon-NY's tariff, Verizon provisions dedicated transport and entrance facilities that are used for 251(c)(2) interconnection purposes at TELRIC-based rates and the *TRRO* unbundling limitations expressly do not apply to such facilities.¹³ While the Verizon-MA tariff is designed differently and requires that interconnection facilities be purchased out of the Unbundled IOF Transport section of its tariff, RCN simply wants the same rights to purchase such facilities with no such limitations under the Verizon MA tariff.¹⁴

¹³ For example, Verizon New York, Inc.'s PSC NY No. 8 Tariff, Sections 6.5.1.A.2 & 3 (specifying that Verizon will provision entrance facilities and dedicated transport for interconnection), 6.11.1.D & E (application of rates and charges for dedicated transport and entrance facilities used for interconnection) and PSC No. 10 Tariff, Section 5.3.4, page 14 (application of rates and charges for unbundled interoffice facilities) have identical monthly rates for inter-office transport mileage and entrance facilities. *Compare* NY PSC No. 8, Section 35.6.4 pages 13-14, with NY PSC No.10, Section 5.3.4.7, pages 23-24. For instance, under PSC NY No. 8, the monthly rate for a DS1 entrance facility is \$102.75 and, under PSC NY No. 10, the same rate of \$102.75 appears. *Id.*

¹⁴ In the alternative, if for any reason the Department does not adopt the language proposed above, then at a minimum it should require Verizon-MA to adopt tariff language that echoes the statement in the Arbitration Order cited in note 5, above: "Any provisions in this Tariff that limit the availability of Unbundled IOF Transport or impose obligations on CLECs that are based on the FCC's 251(c)(3) unbundling regulations do not change either Verizon's or the CLEC's pre-existing rights and responsibilities concerning interconnection facilities under Section 251(c)(2)." While this alternative language is literally consistent with the Arbitration Order, however, its vagueness would be a virtual invitation to future litigation, and therefore RCN strongly recommends that the Department adopt the unambiguous language proposed in the main text.

For the foregoing reasons, RCN respectfully requests that the Department order Verizon to modify its compliance filing as specified herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip J. Macres", is written over a horizontal line.

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